



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
APPEALS & CONSTITUTIONAL LITIGATION DIVISION
GOVERNMENT ACCOUNTABILITY UNIT

EVAN DANIELS
UNIT CHIEF COUNSEL
PHONE No.: (602) 542-7710
EVAN.DANIELS@AZAG.GOV

March 8, 2019

By Certified Mail, Return Receipt Requested

Naco Sanitary District
P.O. Box 755
Naco, AZ 85620

Re: Open Meeting Law and the Naco Sanitary District

Board Members:

As you know, the Office of the Attorney General (the "Office") received a complaint alleging that the Naco Sanitary District (the "District") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegation and has determined that the District violated the Open Meeting Law. The facts recited in this letter serve as a basis for this conclusion, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 38-431 *et. seq.*

Violation

The Office has determined that the District violated the Open Meeting Law in the instances detailed below after review of the information in the complaint and the documents provided in the District's January 29, 2019 response. However, the Office was unable to substantiate that the District failed to properly post public meeting notices from approximately 2014 until April of 2018 or that meeting minutes were not properly retained and made available to the public within three business days after District meetings.

Issue #1

The District violated the Open Meeting Law by taking legal action on a matter not listed on the District's January 10, 2019 agenda. Section 38-431.02(H) states that "[t]he public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto." If the public body takes action at a meeting on an item that is not properly noticed, then that action not only violates the Open Meeting Law, but is considered null and void. *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570 (App. 2001); A.R.S. § 38-431.05(A).

The District provided the notice, agenda, and minutes for the District's January 10, 2019 as requested by the Office's January 8, 2019 letter. The January 10, 2019 agenda lists the following agenda items: Roll Call; Office Report; Field Report; Discuss Naco Sanitary Election Results;

Discuss Status of Naco Sanitary Website; Discuss Status of Spreadsheets and Software Upgrade for Naco Sanitary Operations; Discuss NSD Delinquent Accounts; Discuss ADEQ Bill Dated June 2018; Discuss Open Meeting Complaint Regarding Naco Sanitary District; Discuss Naco Sanitary Complaint Regarding Public Records. However, the January 10, 2019 minutes include the following: "Jesus asked to change NSD meeting dates to 2nd Thursday of each quarter in response to board member inputs. Joe motioned to change meeting dates to Thursdays of each quarter instead of Tuesdays. David seconds the motion. All in favor. Motion carries." Naco Sanitary District, January 10, 2019 Minutes at 3.

The District's legal action to change the District's meeting dates to the second Thursday of each quarter was not on the January 10, 2019 notice or agenda. The Open Meeting Law requires that the public be provided notice of all items that the public body will discuss and decide. *See* A.R.S. § 38-431.02. Best practices state that if a matter not listed on the agenda comes up at a meeting, a discussion or decision by the public body should be deferred until a later meeting. *See Arizona Agency Handbook* § 7.7.6 (Ariz. Att'y Gen. 2018). Because the decision to change the District's meeting dates was not listed on the agenda, the District could not discuss or take legal action on that matter at the January 10, 2019 meeting. Therefore, the District violated the Open Meeting Law and the vote to change the District's meeting dates is null and void.

Issue #2

The District violated the Open Meeting Law by failing to include a description of the specific topics to be discussed during the Office and Field Reports on all of the District's agendas beginning on May 1, 2018. Section 38-431.02(H) requires that an agenda "list the specific matters to be discussed, considered or decided at the meeting." A generic agenda item does not contain enough information that is "reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.02(H). Only "the chief administrator, presiding officer or a member of the public body [is permitted to] present a brief summary of current events without listing in the agenda the specific matters" to be discussed, so long as the summary "is listed on the agenda [and] the public body does not propose, discuss, deliberate or take legal action" on the matters presented in the summary. A.R.S. § 38-431.02(K). The *Arizona Agency Handbook* further clarifies that reports "address[ing] matters other than a summary of current events . . . do not come within the provision authorizing current events summaries and must comply with the agenda requirements of the Open Meeting Law." *Arizona Agency Handbook* § 7.7.8 (Ariz. Att'y Gen. 2018).

The District provided the notices, agendas, and minutes for all five District meetings since May 2018 as requested by the Office's January 8, 2019 letter. The notices and agendas for all five District meetings include the items "Office Report" and "Field Report" with no additional information provided.

It appears that the District's agendas regularly contained the generic items entitled "Office Report" and "Field Report." These generic items violated the Open Meeting Law for several reasons. First, the reports do not appear to be a current events summary given by one of the three designated officials as Ms. Rosa Ramirez Deford is not listed as an elected member of the public body per the Cochise County Special Districts website. Second, the District's meeting minutes from September 27, 2018 and January 10, 2019 denote that District members engaged in discussion and feedback with Ms. Deford during her reports. In order for the District members to engage in discussion with

Ms. Deford about the reports, the District must designate the reports as discussion items. Finally, the agendas do not list the contents of the reports presented by Ms. Deford. As discussed above, agendas must list the specific items to be discussed. Thus, in order to comply with the Open Meeting Law, the District must specify the contents of the report on the agenda. Because the District did not list the specific topics discussed by Ms. Deford, the District violated the Open Meeting Law.

Additional Concern

In addition to the discussed violations, the Office has concerns about the District's compliance with A.R.S. § 38-431.01(D), which states that a public body's minutes "shall be available for public inspection [within] three working days after the meeting[.]" For example, the District's June 26, 2018 meeting minutes appear to have been prepared and available for public access on July 9, 2018; this resulted in minutes being available eight working days after the District meeting. If the District is unable to post written minutes within three working days after a meeting, the Open Meeting Law allows public bodies to record a meeting and post that recording within three working days after the meeting in the place of written minutes. *See Arizona Agency Handbook* § 7.8.1 (Ariz. Att'y Gen. 2018). While the Office acknowledges that the District appears to be staffed by local volunteers, this does not obviate the District's responsibility to comply with Open Meeting Law requirements.

Remedy

To remedy this violation, the Office considered the readily available records documenting whether the District has had any recent open meeting violations and the District's response.

Having weighed these factors, and in order to resolve this matter, the Office now requires that all District members and pertinent employees attend an Open Meeting Law training conducted by the Arizona Ombudsman-Citizens' Aide, another pre-approved organization, or a pre-approved attorney within sixty days of receipt of this letter. Evidence of completion of such training shall be provided to the Office to be kept on file. The Office has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the District and its current members.

Furthermore, pursuant to A.R.S. § 38-431.05(A), "[a]ll legal action transacted by any public body during a meeting held in violation of any provision of [the Open Meeting Law] is null and void," unless subsequently ratified pursuant to section 38-431.05(B). The violation concerning the vote to change the District's meeting dates does not "nullify all other legal action taken at the meeting," *see* Ariz. Att'y Gen. Op. I08-001, and therefore only the legal action taken in regard to the vote to change the District's meeting dates is considered "null and void" in the absence of ratification.

Section 38-431.05(B) provides a process by which "[a] public body may ratify legal action taken in violation" of the Open Meeting Law. Ratification of legal action "shall take place at a public meeting within thirty days after discovery of the violation[.]" A.R.S. § 38-431.05(B)(1). The District has thirty days from the date of receipt of this letter to ratify any legal action taken by the District in regards to the January 10, 2019 vote to change the District's meeting dates. The procedure

for ratification is provided in A.R.S. § 38-431.05(B). *See also Arizona Agency Handbook* § 7.12 (Ariz. Att’y Gen. 2014).

If the District chooses to ratify any legal action concerning the January 10, 2019 vote to change the District’s meeting dates, please provide verification to the Office within seven days of such ratification. In the absence of statutorily valid ratification, the legal action previously taken by the District regarding the January 10, 2019 vote to change the District’s meeting dates is considered null and void.

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General’s Office and should not be cited as authority in other matters.



Evan Daniels
Chief of Government Accountability Unit



Office of the Attorney General
Solicitor General's Office
2005 N Central Ave
Phoenix, AZ 85004

CERTIFIED MAIL



91 7199 9991 7039 3299 9120

Naco Sanitary District
P.O. Box 755
Naco, AZ 85620